

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CARMEN VERADE-CUEVAS and U.S. POSTAL SERVICE,  
CIVIC CENTER STATION, Oakland, Calif.

*Docket No. 95-2575; Submitted on the Record;  
Issued January 20, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of total disability on June 11, 1993 causally related to her February 1, 1991 employment injury.

On February 1, 1991 appellant, then a 28-year-old letter carrier, sustained a back strain in the performance of duty due to heavy lifting in her work. She returned to work in a light-duty capacity on April 19, 1993.

In a work restriction form dated March 2, 1993, Dr. John C. Kofoed, a Board-certified orthopedic surgeon, indicated that appellant could work for eight hours a day with restrictions which included no lifting over 20 pounds, intermittent sitting limited to four hours a day, intermittent standing and walking limited to two hours a day, intermittent lifting limited to one hour a day, and no bending, squatting, climbing, kneeling, or twisting.

On March 17, 1993 the employing establishment offered appellant a limited-duty position and described the position as "answers the telephones, writes-up accountables and updates 3575." The physical restrictions were in accord with the limitations set forth in Dr. Kofoed's March 2, 1993 work restriction form and included sitting, walking, and standing limited to two hours a day, lifting of up to 20 pounds limited to one hour a day, and no bending, squatting, climbing, twisting, or kneeling. The record shows that Dr. Kofoed approved the limited-duty position on April 14, 1993.

In a report dated June 15, 1993, Dr. Kofoed related that appellant had returned to work on April 19, 1993 on light duty, had worked until June 11, 1993, and had stopped work at that point due to an increase in back pain with numbness and pain radiating down her arms. He indicated that appellant should remain off work until June 21, 1993 at which time she could attempt to return to modified work. Dr. Kofoed noted appellant's comment that there was "talk at work of [appellant] working on the street for a couple of hours during the day" and that "It probably would be a good idea to avoid going out to the street where she is going to have to do

some lifting and maneuvering and driving and changing positions that may further aggravate her condition.”

In a work restriction form dated June 15, 1993, Dr. Kofoed changed appellant’s work restrictions. He indicated that appellant could return to limited-duty work on June 21, 1993 with no restrictions on standing, walking, or sitting but indicated that appellant should avoid street delivery. Dr. Kofoed restricted lifting to no more than 10 pounds occasionally with no bending, squatting, kneeling, climbing, or reaching above the shoulders. He indicated that light pushing or pulling and repetitive hand motions could occur occasionally.

In a work restriction form dated August 17, 1993, Dr. Kofoed again revised appellant’s limitations. He indicated no restrictions on standing, walking, sitting, bending, squatting, or kneeling, occasional reaching above the shoulders, occasional repetitive hand motions and occasional simple grasping and permitted frequent lifting of no more than 10 pounds. He prohibited climbing, and pushing and pulling.

In a report dated August 17, 1993, Dr. Kofoed provided findings on examination and indicated that appellant should not return to her light-duty work until August 23, 1993.

On August 23, 1993 appellant accepted a light-duty position with duties which were unchanged from her original light-duty position. The restrictions were in accord with Dr. Kofoed’s August 17, 1993 report and included no pushing, pulling, or climbing and reaching above the shoulders and repetitive hand motions limited to two hours a day.

In a report dated September 29, 1993, Dr. Kofoed provided findings on examination and indicated that appellant should be off work from September 23 through October 4, 1993 due to upper back pain but could perform modified work for four hours a day commencing on October 4, 1993 with certain restrictions including avoiding overhead activity and repeat bending and lifting, and no lifting over ten pounds. He noted that appellant attributed her pain to repeated lifting, bending, and prolonged sitting. Dr. Kofoed related that appellant was being asked by the employing establishment to perform activities outside of her work restrictions.

By letter dated December 7, 1993, the Office of Workers’ Compensation Programs noted that it had received a claim from appellant for compensation benefits for total disability commencing on June 11, 1993 and advised appellant that she needed to submit medical evidence establishing that she was no longer capable of performing her light-duty job and that she was totally disabled due to her employment injury.

By decision dated January 24, 1994, the Office denied appellant’s claim for a recurrence of total disability.

By letter dated December 2, 1994, appellant requested reconsideration of the denial of her claim and submitted additional medical evidence.

In a report dated January 11, 1994, Dr. Kofoed related that he had been treating appellant for a chronic back condition which was consistent with a chronic myofascitis or inflammatory soft tissue muscle back syndrome. He related that appellant had been disabled and unable to

perform her regular work duties as a result of her back condition. Dr. Kofoed diagnosed chronic thoracic upper back pain and noted that the condition was primarily suggestive in nature with no objective findings. Dr. Kofoed stated that prior to her return to light-duty work on August 22, 1993 appellant was disabled as a result of her back pain.

In a report dated June 7, 1994, Dr. Kofoed stated that appellant had an ongoing soft tissue myofascitis-inflammatory back syndrome and that periodically this condition flared up and caused significant back discomfort. He related that appellant returned to work on August 23, 1993 working four hours a day as she was unable to work the full eight hours. He indicated that appellant did not return to work until August 23, 1993 because the employing establishment had not provided her with light duty until that time.

By decision dated January 27, 1995, the Office denied modification of its January 24, 1994 decision.<sup>1</sup>

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of total disability on June 11, 1993 causally related to her February 1, 1991 employment injury.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish, by the weight of the reliable, probative, and substantial evidence, a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.<sup>2</sup> In the instant case, appellant has failed to establish either a change in the nature or extent of her light-duty requirements or a change in her accepted injury-related condition.

On February 1, 1991 appellant sustained a back strain in the performance of duty and returned to work in a light-duty capacity on April 19, 1993. Appellant subsequently claimed that she sustained a recurrence of total disability on June 11, 1993 which she attributed to her February 1, 1991 employment injury.

The record shows that appellant's light-duty position which she commenced on April 19, 1993 involved answering the telephone, writing up accountables, and updating "3575." The position's work restrictions were in accord with the restrictions set forth in the March 2, 1993 work restriction evaluation of Dr. Kofoed, appellant's attending Board-certified orthopedic surgeon, and Dr. Kofoed provided written approval of this light-duty position on April 14, 1993.

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<sup>1</sup> Subsequent to the Office's January 27, 1995 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

<sup>2</sup> *See Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Stuart K. Stanton*, 40 ECAB 859, 864 (1989).

In a report dated June 15, 1993, Dr. Kofoed related that appellant had returned to work on April 19, 1993 on light duty, had worked until June 11, 1993, and had stopped work at that point due to an increase in back pain with numbness and pain radiating down her arms. He indicated that appellant should remain off work until June 21, 1993 at which time she could attempt to return to modified work. However, Dr. Kofoed did not attribute this disability to any change in the nature or extent of appellant's 1991 employment injury or to any change in the nature or extent of appellant's light-duty requirements. Although appellant related to Dr. Kofoed that there was "talk" at work about adding street delivery duties to her job, there is no evidence of record that appellant's light-duty activities were, in fact, ever changed. Therefore, this report does not support appellant's claim that she sustained a recurrence of total disability on June 11, 1993 causally related to her February 1, 1991 employment injury.

In a report dated August 17, 1993, Dr. Kofoed provided findings on examination and indicated that appellant should not return to her light-duty work until August 23, 1993. However, he did not indicate the cause of appellant's total disability and therefore this report is not sufficient to discharge appellant's burden of proof.

The record shows that Dr. Kofoed modified appellant's work restrictions on June 15 and August 17, 1993. In the June 15, 1993 report, he eliminated the restrictions on standing, walking and sitting but changed the 20-pound lifting restriction to 10 pounds and recommended no street delivery. In the August 17, 1993 report, Dr. Kofoed eliminated the restrictions against bending, squatting, and kneeling and kept the 10-pound lifting limitation.

In August 23, 1993 appellant accepted a light-duty position with duties which were unchanged from her original light-duty position. The work restrictions were in accord with Dr. Kofoed's June 15 and August 17, 1993 reports. Regarding Dr. Kofoed's recommendation that appellant avoid street delivery, the August 23, 1993 position did not include street delivery as a requirement and there is no evidence of record that appellant's duties were changed to include street delivery.

In a report dated September 29, 1993, Dr. Kofoed provided findings on examination and indicated that appellant should be off work from September 23 through October 4, 1993 due to upper back pain but could perform modified work for four hours a day commencing on October 4, 1993. He noted that appellant attributed her pain to repeated lifting, bending, and prolonged sitting. Dr. Kofoed related that appellant was being asked by the employing establishment to perform activities outside of her work restrictions. However, there is no evidence of record to support appellant's allegation of job requirements which exceeded her work restrictions. Even if there had been such evidence, Dr. Kofoed did not provide any rationalized medical evidence establishing that appellant's claimed disability in 1993 was causally related to her 1991 employment injury. Therefore this report is insufficient to establish that appellant sustained a recurrence of total disability on June 11, 1993 causally related to her 1991 employment-related back strain.

In a report dated January 11, 1994, Dr. Kofoed related that he had been treating appellant for a chronic back condition which was consistent with a chronic myofascitis or inflammatory soft tissue muscle back syndrome. He related that appellant had been disabled and unable to perform her regular work duties as a result of her back condition. Dr. Kofoed diagnosed chronic

thoracic upper back pain and noted that the condition was primarily suggestive in nature with no objective findings. Dr. Kofoed stated that prior to her return to light-duty work on August 22, 1993 appellant was disabled as a result of her back pain. This report is not based upon a complete and accurate factual background in that the record shows that appellant had commenced light-duty work, approved by Dr. Kofoed, on April 19, 1993, not August 22, 1993. Furthermore, Dr. Kofoed provided no rationalized medical opinion explaining how appellant's 1993 back condition was causally related to a change in the nature and extent of her 1991 employment-related back strain or to a change in the nature and extent of her light-duty work. Therefore this report does not support appellant's claim of an employment-related recurrence of total disability.

In a report dated June 7, 1994, Dr. Kofoed stated that appellant had an ongoing soft tissue myofascitis-inflammatory back syndrome and that periodically this condition flared up and caused significant back discomfort. He related that appellant returned to work on August 23, 1993 working four hours a day as she was unable to work the full eight hours. He indicated that appellant did not return to work until August 23, 1993 because the employing establishment had not provided her with light duty until that time. However, the evidence of record shows that appellant was provided with a light-duty position commencing on April 19, 1993. There is no evidence that there was a change in the nature and extent of appellant's light-duty position such that she was rendered totally disabled. Therefore this report does not discharge appellant's burden of proof.

As appellant failed to provide sufficient rationalized medical evidence establishing that she was rendered totally disabled commencing on June 11, 1993 as a result of a change in the nature or extent of her 1991 employment injury or a change in the nature and extent of her light-duty requirements, the Office properly denied her claim for a recurrence of total disability.

The decision of the Office of Workers' Compensation Programs dated January 27, 1995 is affirmed.

Dated, Washington, D.C.  
January 20, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom

Alternate Member